

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 21, 2008 Session

SHARON WALKER v. SATURN CORPORATION

**Direct Appeal from the Circuit Court for Maury County
No. 9601 Jim T. Hamilton, Circuit Judge**

**No. M2007-01506-WC-R3-WC - Mailed - July 30, 2008
Filed - September 2, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. On appeal, the employee contends that the trial court erred in three ways: (1) by finding that she did not carry her burden of proof with respect to causation; (2) by finding, in the alternative, that she retains only a ten percent permanent partial disability; and (3) by allowing the employer to admit extrinsic evidence of specific conduct in an attempt to attack the credibility of her expert medical witness. Because the evidence does not preponderate against the trial court's findings, we affirm the trial court's judgment.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Circuit Court Affirmed

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and ALLEN W. WALLACE, SR. J., joined.

J. Anthony Arena, Brentwood, Tennessee, for the appellant, Sharon Walker.

Marcia McShane Watson, Nashville, Tennessee, for the appellee, Saturn Corporation.

MEMORANDUM OPINION

FACTUAL AND PROCEDURAL HISTORY

Sharon Walker was forty-three years old at the time of trial. She attended high school through the tenth grade but eventually earned her GED. She also took college-level data entry classes. Prior to her employment with General Motors, Ms. Walker had worked as a bartender and a waitress.

In 1985, Ms. Walker began working for General Motors in their Wentzville, Missouri, plant. In 1990, she moved to the Saturn plant in Spring Hill, Tennessee. At Saturn, Ms. Walker worked in various departments from 1990 to 2000, and was moved to the vehicle testing department where she worked from 2000 to 2007. As part of her responsibilities in the vehicle testing department, Ms. Walker would get into every fourth vehicle, perform the required tests and then drive the car onto the line. She would then exit that vehicle and go back and get another. According to Ms. Walker, she would enter and exit forty to seventy vehicles each shift. At the time of trial in 2007, Ms. Walker was still working in vehicle testing but was no longer getting into and out of vehicles.

On August 2, 2001, Ms. Walker filed this workers' compensation claim. In the complaint, she alleged that, while working in vehicle testing, she had suffered a permanently disabling injury as the result of a work-related low-back injury. Ms. Walker alleged, in the alternative, that she injured her back during a fall at work on August 4, 2000, or had sustained a gradual back injury which manifested itself on or about November 1, 2000, and was caused by getting into and out of so many vehicles.

Lower-Back Medical History

In April 1993, Ms. Walker first sought treatment for low back pain at the Franklin Bone & Joint Clinic ("Clinic") following a motor vehicle accident. She was seen by Dr. Paul Thomas. She also was pregnant which caused her back discomfort. On September 22, 1993, Ms. Walker was seen at the Clinic and complained of low-back pain caused by repetitive use related to taking care of her child. During this period, Ms. Walker missed several weeks of work due to the condition in her back. In January 1996, Ms. Walker returned to the Clinic, reporting that she was lifting her child when she experienced immediate pain radiating down her back into her lower extremities. Dr. Michael McNamara, who later began seeing Ms. Walker, testified that such radiating pain is consistent with the irritation of a nerve root and was most likely caused by a disk herniation. She was treated with an injection and a Medrol dose pack. Ms. Walker returned ten days later reporting that her back was improved and the radiating pain had resolved.

In December 1996, Ms. Walker came to the Clinic and reported she had twisted her back while lifting her son. In May 1997, she reported a back injury with no antecedent trauma. In August 1998, she reported injuring her back while bending. A physical examination was performed and revealed that Ms. Walker had increased tenderness in the lumbar paraspinal muscles, increased pain at the extremes of flexion, and increased pain of lateral bending rotation.

In April 2000, Ms. Walker had left shoulder surgery, which was not work-related. The surgery required her to miss more than three months of work. She returned to work in early August. On August 4, 2000, Ms. Walker slipped as she was walking up steps coming into the Saturn plant. She fell down eight to ten steps. She immediately reported to Saturn's onsite medical facility. The incident report describing the injury states that Ms. Walker complained of "laceration[s] to [her] right thigh, right wrist, right forearm, lower back, and elbow." Under the header "symptoms," Ms. Walker stated that she had "pain to [her] right arm (wrist, elbow, forearm), [a] sore lower back, [and a] sore upper thigh." The Saturn doctor who assessed her injuries, however, wrote under "injury assessment": "Superficial laceration [unreadable] surface right wrist; contusion abrasions medial

surface right forearm near elbow; abrasions right upper lac posterior surface; good range of motion; walks well; Light [unreadable] forearm and hip; Denies other injury and discomfort.” Specifically, no back injury was mentioned.

After her fall at work, on August 7, 2000, Ms. Walker visited Dr. Paul Thomas, the doctor who performed her left shoulder surgery, to have the shoulder examined. During this visit, Dr. Thomas examined Ms. Walker’s left shoulder and right forearm, both at Ms. Walker’s request. Ms. Walker did not mention having any back pain or that she injured her back during the fall on August 4. During four follow-up visits with Dr. Thomas between August 31, and October 10, Ms. Walker did not mention experiencing any back pain. During a visit on November 7, 2000, she reported that she was suffering from low back pain but did not indicate, in any way, this injury was work-related. She reported the pain had started on the previous Sunday without any known incident of trauma.

On November 27, 2000, Ms. Walker returned to Saturn’s onsite medical facility to report an injury. She stated that a disc in her lower back was inflamed. When asked about the cause of the injury, Ms. Walker stated that the pain occurred gradually, beginning approximately November 1, and was caused by repeatedly getting into and out of cars during her work-shift. She reported pain in her lower back, pain down both legs, and limited bending mobility.

On January 25, 2001, Ms. Walker was seen at the clinic complaining of low-back pain radiating into her right leg. On February 5, 2001, Ms. Walker returned to Dr. Thomas’ office with more back problems. During this visit, Ms. Walker stated that she did not feel that she could continue working because of her back pain. During neither of these visits, did she indicate that her back symptoms were work-related. Based upon her complaints, Dr. Thomas ordered an MRI, which revealed some stenosis at L4-5, with a right side disc herniation at L3-4, and some displacement of the L4 nerve root. After reviewing the MRI, Ms. Walker was referred to Dr. Michael McNamara, a spinal surgeon at the Clinic.

Ms. Walker saw Dr. McNamara for the first time on April 20, 2001. During this visit, Ms. Walker told Dr. McNamara that she had to get into and out of cars all day while working at Saturn and that it was difficult for her to perform her work. She did not state, however, that her back problems were a result of these work activities. After taking a medical history and conducting a physical examination, Dr. McNamara placed Ms. Walker on restrictions of no repetitive bending or twisting, no lifting over five pounds, and no getting into and out of vehicles.

On May 2, 2001, Dr. McNamara ordered a myelogram, which revealed some stenosis at L3-4, secondary to a right side disc herniation at L3-4, and some displacement of the L4 nerve root. Pursuant to these medical findings, Dr. McNamara performed a laminotomy at L3-4 and L4-5 and excised the L3-4 disc herniation on June 21. Ms. Walker had follow-up visits with Dr. McNamara on July 25, August 29, and October 3. In each of these visits, Ms. Walker reported that her back pain was decreasing, and by October 3, she had no pain in her legs. Although reporting, during the October 3 visit, that she was getting gradually better, Ms. Walker complained that she had back pain over the weekend while twisting to get out of a car at work. This was the first time that Ms. Walker reported to Dr. McNamara any incident at Saturn that aggravated her back pain symptoms.

On November 27, Ms. Walker called Dr. McNamara's office requesting more pain medication for her back. In the message she left at his office, she stated, according to Dr. McNamara's deposition, that "prior to Thanksgiving she was walking down the hall in her home and her dog knocked her down, and she fell on her back. She then took a long trip to Florida and developed significant back pain symptoms." Dr. McNamara requested that Ms. Walker come in for an examination. Another MRI was ordered, this time revealing a decompression at L3-4 and L4-5 and a L5-S1 central protrusion. Conservative treatment was provided. Another myelogram was ordered in late January, 2002. On January 30, Dr. McNamara reviewed the myelogram and noted that Ms. Walker had "significant prominence of L3-4 and L4-5 and had a right paracentral [herniated disk]."

On July 17, 2002, Ms. Walker reported to Dr. McNamara that she was experiencing an increase in back pain. She did not relate any particular incident as giving rise to the onset of this increased pain. She did report that her back pain prevented her from working. On December 9, 2002, Ms. Walker reported a new injury to her back which occurred on the preceding Saturday. Dr. McNamara noted pain radiating down Ms. Walker's back secondary to a hyper-extension injury. Ms. Walker did not indicate during the visit that the injury was work-related. On May 7, 2003, Ms. Walker called Dr. McNamara and reported that she slipped and fell at a pool and hit her back and neck.

On September 4, 2003, a third lumbar myelogram was ordered, this time revealing that Ms. Walker had a disc herniation at L3-4, nerve root compression at L-4, and a small disc protrusion at L4-5. As a result of the myelogram report, Ms. Walker had a second back surgery on September 11. The surgery involved the excision of the L3-4 herniated disc. Ms. Walker reported noticeable improvement after the surgery, especially "good relief of the leg pain." She felt well enough after the surgery that she phoned Dr. McNamara on October 22 and asked that he return her to work. He granted the request with restrictions of no repetitive bending and twisting, no work over shoulder height, and no lifting more than ten pounds.

On November 24, 2003, Ms. Walker again returned to see Dr. McNamara. She reported an onset of right leg pain while climbing out of cars at Saturn and that the pain had worsened over time. She was removed from work, placed on anti-inflammatory medication, and a follow-up visit was scheduled.

On June 3, 2004, Ms. Walker called in to report that she fell at a restaurant and had hurt her hip and shoulder. She requested that she be taken off work. At Dr. McNamara's request, Ms. Walker came in to his office on June 8. Dr. McNamara noted she was experiencing right foot pain. Ms. Walker did not mention her hip and shoulder injury during this visit.

Ms. Walker saw Dr. McNamara again on August 4, and reported that she had an onset of pain in her right leg when lifting items while moving from her house. An MRI was ordered, which revealed a laminectomy at L3-4, a left laminectomy at L4-5, no evidence of a recurring herniated disc, a central protrusion at L5-S1, and moderate disc desiccation at L3-4. After reviewing the MRI, Dr. McNamara did not think that further surgery was necessary.

On October 25, 2004, Ms. Walker telephoned Dr. McNamara's office and reported that she fell off a ladder while hanging Halloween decorations. She reported a new onset of right leg pain, new onset of weakness, and that she felt she was unable to work. Ms. Walker was taken off work temporarily but was returned to work prior to February 17, 2005, when she had a right foot injury.

On March 23, 2005, Ms. Walker again phoned Dr. McNamara's office, this time requesting that her pain management doctor be changed. She also requested more medication. It was noted that her current pain doctor would not give her more medication "because she did not give [a] sufficient urine specimen and would not allow a blood drug test."

On August 15, Ms. Walker was again seen at Dr. McNamara's office, this time presenting with back pain and right foot pain. She gave no reason for the new onset of pain, stating that there was no known trauma. She described the pain as mild in severity, aching in nature, and radiating from the back in the right buttock to down below the knee.

On October 21, she again saw Dr. McNamara, this time reporting that she felt a pop the day before and was now unable to bear weight. Ms. Walker did not relate where she was when this injury occurred. Thereafter, a third and final back surgery was performed on November 3, 2005. The surgery was for a recurrent disc herniation at L3-4. Following this surgery, on December 8, 2005, Ms. Walker was returned to work with no restrictions. However, she was later given a permanent restriction of lifting no more than thirty pounds. Dr. McNamara testified there was no basis in Ms. Walker's medical record for determining that Ms. Walker's back injuries or the subsequent surgeries were work-related or that any of her work activities had caused any anatomical change in Ms. Walker's spine.

Dr. Walter Wheelhouse saw Ms. Walker on two occasions. The first visit occurred on May 23, 2005, following her second back surgery. After reviewing Ms. Walker's medical history, including all of Dr. McNamara's office notes, the surgery reports, the MRI and myelogram results, and conducting a thorough medical examination, Dr. Wheelhouse concluded that Ms. Walker's first surgery was caused by the initial work injury on August 4, 2000, which worsened on or about November 1, 2000, when she was repeatedly getting into and out of automobiles at Saturn. Dr. Wheelhouse determined that, although the spinal stenosis discovered on the first MRI was not work-related, in his opinion, the herniated disc at L3-4 was work-related. Dr. Wheelhouse stated, however, that Ms. Walker's spinal stenosis was aggravated or advanced by her work activities. Dr. Wheelhouse then explained in detail how repeatedly getting into and out of vehicles can aggravate or advance spinal stenosis.

Dr. Wheelhouse saw Ms. Walker a second time on April 19, 2006, after her third back surgery. When asked what he felt caused the need for the third surgery, Dr. Wheelhouse stated, "It was just a natural progression of her original injury back in November 2000." Dr. Wheelhouse assigned an impairment rating of thirty percent to the body as a whole.

In his testimony, Dr. Wheelhouse repeatedly stated that Ms. Walker had told him, during her first visit, that her back injury was work-related. He testified that she specifically stated her back initially began to hurt after the fall on August 4, 2000, but that she had increased leg and back pain

starting November 1, 2000, as a result of getting into and out of vehicles at Saturn. Dr. Wheelhouse admitted, however, that Ms. Walker's recollection of the back injury, as reflected in his notes, was different than the recollection she gave Drs. Parsons and McNamara. He also admitted that if the medical history given to him by Ms. Walker was inaccurate, it could affect his medical opinions.

Finally, Dr. Wheelhouse recommended permanent restrictions on Ms. Walker's work activities, including that she not return to any type of factory work, that she avoid repetitive bending, stooping, lifting, twisting, or turning, and that she avoid prolonged standing, walking, sitting, or getting into and out of automobiles excessively.

Trial Court Proceedings

After reviewing the medical depositions and listening to the testimony of the witnesses, the trial judge, by order filed on January 9, 2007, determined that Ms. Walker probably had a disc herniation in 1993 and, therefore, failed to carry her burden of proving that the three back surgeries were work-related. The trial court placed great emphasis on the back problems that plagued Ms. Walker prior to the August 4, 2000, and November 1, 2000, alleged work injuries. It also noted that during the four visits to see Dr. Thomas after the August 4 fall, Ms. Walker did not mention back pain, and that during the three visits after the alleged November 1 injury, she did not mention that she felt her back injury was work-related. The trial court further observed that Ms. Walker reported trauma to her back on several occasions following the November 2000 time period that was not related to her work. Finally, the trial court noted that Dr. McNamara treated Ms. Walker for more than five years and that his notes did not reflect any history of a work-related condition. Accordingly, the trial court dismissed Ms. Walker's complaint for failing to carry her burden of proving that her back injuries were work-related.

Ms. Walker filed a Motion to Alter, Amend, or Modify Judgment, arguing that there was:

“absolutely no proof at trial which would support a finding that Ms. Walker likely herniated her disc in the 1990s. While Ms. Walker had several back strains prior to her 2000 workplace injury, it was documented on only two occasions that she was having radicular pain and that was temporary in nature and had completely resolved well before her workplace injuries in the year 2000.”

Although again finding that Ms. Walker failed to carry her burden of proving that her back injuries were work-related, the trial court made an alternative finding that she had sustained a vocational disability of ten percent as the result of her back injury. The court also observed that Ms. Walker was back at work as of June 11, 2007.

STANDARD OF REVIEW

We review factual issues in a workers' compensation case de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings. See Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007); see also Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004); Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 825-26 (Tenn. 2003).

When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, the court on appeal must extend considerable deference to the trial court's factual findings. Houser v. Bi-Lo, Inc., 36 S.W.3d 68, 71 (Tenn. 2001). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert medical testimony when it is presented by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). With these principles in mind, we review the record to determine whether the evidence preponderates against the trial court's findings.

ANALYSIS

Causation

In her first argument, Ms. Walker contends that the trial court erred in finding she failed to carry her burden of proving her back injuries are work-related. To support her argument, Ms. Walker relies on her testimony and the testimony of Dr. Wheelhouse.

Ms. Walker has the burden of proving every element of her case by a preponderance of the evidence. Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992). With regard to the element of causation, a plaintiff carries her burden when the proof determines that the "injury has a rational, causal connection to the work." Braden v. Sears, Roebuck & Co., 833 S.W.2d 496, 498 (Tenn. 1992). Our courts have "consistently held that an award may properly be based upon medical testimony to the effect that a given incident 'could be' the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury." Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997). Although absolute certainty is not required for proof of causation, Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004), "medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility." Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937 (Tenn. 1987). "If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within [the plaintiff's] employment, or a cause operating without [her] employment, there can be no award." Tibbals Flooring Co. v. Stanfill, 219 Tenn. 498, 508, 410 S.W.2d 892, 897 (1967).

The trial court, after hearing testimony, reviewing trial exhibits, and weighing the evidence, determined that Ms. Walker had failed to prove her back injuries arose out of the course and scope of her employment with Saturn. After a careful review of the record before us, we conclude that the evidence does not preponderate against the trial court's findings. Accordingly, we affirm the decision of the trial court with regard to the issue of causation.

Extrinsic Evidence to Attack Dr. Wheelhouse's Credibility

Ms. Walker also argues that the trial court erred in allowing Saturn to admit extrinsic evidence of specific conduct in an attempt to attack the credibility of her expert medical witness, Dr. Wheelhouse. Pursuant to Tennessee Rule of Evidence 608(b), Ms. Walker argues that the evidence used to attack Dr. Wheelhouse's credibility should have been excluded.

During his deposition, Saturn questioned Dr. Wheelhouse about allegations of medical malpractice that were brought against him in 1988 while he was practicing in the state of Illinois and how those allegations relate to his application to be on the Medical Impairment Rating registry of the Tennessee Department of Labor & Workforce Development. Saturn raised these issues to attack Dr. Wheelhouse's credibility as a witness and to rebut the evidence concerning his qualifications to testify as an expert witness.

Dr. Wheelhouse was "on the MIR program with the Department of Labor and Workforce Development" but was suspended temporarily when questions were raised as to whether he was truthful in the application process. Specifically, the MIR registry application asked, "Have you had any actions against your medical license in any state?" Dr. Wheelhouse answered no. However, in 1988 the State of Illinois Department of Registration and Education brought medical malpractice charges against Dr. Wheelhouse. After an informal hearing, a settlement was reached. As part of the settlement, Dr. Wheelhouse agreed not to renew his medical license in the state of Illinois. When asked about his answer on the application, Dr. Wheelhouse testified that he did not view the settlement as being an "action" against his medical license because he was no longer practicing in Illinois at the time of settlement and his license in that state had already expired.

In addition to Dr. Wheelhouse's testimony on the issues of his settlement agreement and temporary suspension from the MIR registry, Saturn took the deposition of Jeff Francis, the director of the MIR registry. Mr. Francis testified that Dr. Wheelhouse was no longer on the registry because of some information sent to the registry "that led me to believe that maybe Dr. Wheelhouse had not been truthful and/or correct in one of the questions on the application." Although stating that the registry did not conclusively determine whether Dr. Wheelhouse was untruthful, Mr. Francis stated that Dr. Wheelhouse was nonetheless removed from the registry because of the possibility that he might have made a misrepresentation on the application.

Ms. Walker filed a motion in limine based on Tennessee Rule of Evidence 608(b), arguing that the rule does allow for specific instances of conduct to be used for the purpose of attacking a witness's credibility but disallows the use of extrinsic evidence to prove prior bad acts. In this instance, Ms. Walker argues that Mr. Francis's deposition was extrinsic evidence. Moreover, Ms. Walker argues that the cross examination of Dr. Wheelhouse regarding these matters was not probative of his truthfulness or untruthfulness because Mr. Francis testified that the Department of Labor did not find Dr. Wheelhouse's application untruthful. Accordingly, Ms. Walker argued that both Mr. Francis's deposition and Dr. Wheelhouse's testimony with regard to the MIR registry should have been excluded.

With regard to Dr. Wheelhouse's cross-examination testimony, the trial court did not abuse its discretion in admitting the evidence. See Heath v. Memphis Radiological Prf'l Corp., 79 S.W.3d 550, 558-59 (Tenn. Ct. App. 2001) (stating that an appellate court will not reverse a trial court's decision on the admissibility of evidence, including a ruling on a motion in limine, absent clear abuse). Tennessee Rule of Evidence 608 "accepts the idea that a person's character is both a relevant and important factor in assessing that person's credibility." Calmelet v. Eluhu, No. M2005-01981-COA-R3-CV, 2006 WL 2091385, *5 (Tenn. Ct. App. July 11, 2006). In this instance, the trial court determined that Dr. Wheelhouse's application answers were relevant to

determine his veracity. Moreover, the trial court also determined, pursuant to Tennessee Rule of Evidence 403, that Dr. Wheelhouse's appearance of dishonesty was more probative than prejudicial. Neither of these findings was an abuse of the trial court's discretion, and therefore, we will not reverse its decisions on appeal.

With regard to Mr. Francis's deposition, under Tennessee Rule of Evidence 608, this testimony should not have been admitted to attack Dr. Wheelhouse's credibility because it is extrinsic evidence. However, Saturn argued to the trial court that this evidence was also relevant to rebut the evidence concerning Dr. Wheelhouse's qualifications to testify as an expert witness. It is with regard to this issue, we believe the evidence was relevant.

Tennessee Code Annotated section 50-6-204(d)(6) requires the Commissioner of Labor and Workforce Development to establish an independent medical examiners registry. The Commissioner is also required by that code section to "establish qualifications for the independent medical examiners, including continuing education and peer review requirements, with the advice of the Tennessee Medical Association and the Workers' Compensation Advisory Council." Certainly, whether someone has been included or excluded from that registry is relevant to their qualifications to testify as an expert medical examiner. During his testimony, Dr. Wheelhouse testified as to his medical training and the fact that he was board certified as an orthopaedic surgeon. He also testified that he was a Fellow of the American Academy of Disability Evaluating Physicians and described the focus of that organization. In fairness, it was then appropriate for the trial court to admit evidence that Dr. Wheelhouse had been suspended from the Commissioner's Medical Impairment Rating registry and the reasons for that suspension. We, therefore, cannot find the trial court's denial of Ms. Walker's motion in limine was error. Accordingly, we affirm the trial court's finding that Ms. Walker did not carry her burden of proving that her back injuries were work-related.

CONCLUSION

For the reasons stated above, we find that the evidence does not preponderate against the trial court's findings and, therefore, affirm the trial court's judgment. Costs of this appeal are taxed to Sharon Walker, and her surety, for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
APRIL 21, 2008 SESSION

SHARON WALKER v. SATURN CORPORATION

Circuit Court for Maury County
No. 9601

No. M2007-01506-WC-R3-WC - Filed - September 2, 2008

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to Sharon Walker, and her surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM